

ARTICLE 6.3 UNDERGROUND FACILITIES

§ 40-360.21. Definitions

In this article, unless the context otherwise requires:

1. “Abandoned” means no longer in service and physically disconnected from a portion of the facility, or from any other facility, that is in use or still carries service.
2. “Careful and prudent manner” means conducting excavation in such a way that when it is within twenty-four inches of the underground facility located and marked, by the owner or operator, by stakes, paint or in some customary manner, the exact location is manually determined, and the uncovered facility is supported and protected.
3. “Cross culverts or similar roadway drainage facilities” means transverse drainage structures where both ends or openings are visible, and which includes box culverts, drainage pipes or other covered structures.
4. “Excavation” means any operation in which earth, rock or other material in the ground is moved, removed or otherwise displaced by means or use of any tools, equipment or explosives and includes, without limitation, grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, cable or pipe plowing and driving.
5. “Implied easement” means any easement or right-of-way on private property required to provide utility services by means of underground facilities on property of the owner requesting such service.
6. “Inactive” means:
 - (a) That portion of an underground facility that is not in use but is still connected to the facility, or to any other facility, that is in use or still carries service.
 - (b) A new underground facility that has not been connected to any portion of an existing facility.
7. “Installation of records of an underground facility” means maps, drawings, diagrams, surveys, schematics, illustrations, sketches or any other depictions or descriptions of an underground facility that reflect the location at the time of installation of the underground facility and any surface extensions in a reasonably accurate manner.
8. “Locator strip” means a plastic or other durable material ribbon containing a material capable of being detected from above ground with an electronic locating device and color coded by type of underground facility.
9. “Locator wire” means a copper wire or metallic, conductive, noncorrosive trace wire capable of being detected from above ground with an electronic locating device.

10. "One call notification center" means an organization of owners or operators of buried facilities which provides a telephone notification service for the purpose of receiving and distributing to its members advance notifications from persons regarding planned excavations.
11. "Person" means any individual, firm, joint venture, partnership, corporation, association, municipality, governmental unit, department or agency and shall include any trustee, receiver, assignee or personal representative thereof.
12. "Routine road maintenance grading" means the routine grading or resurfacing of the concrete, asphaltic or composite surface but not the subbase of a roadway by the state or a political subdivision of the state for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch.
13. "Stakes, paint or in some customary manner" means marking the location of an underground facility by the colors established by the commission. These colors shall be restricted to the underground facility location.
14. "Underground facility" means any item of personal property that is buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic, or telegraphic communications, electric energy, oil, gas or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those portions of poles and their attachments below ground. Except cross culverts or similar roadway drainage facilities and landscape irrigation systems of one inch in diameter or less located in dedicated public rights-of-way or a state highway.

§ 40-360.22. Excavations; determining location of underground facilities; providing information; excavator marking; on-site representative; validity period of markings.

- A. A person shall not make or begin any excavation in any public street, alley, right-of-way dedicated to the public use or utility easement or on any express or implied private property utility easement without first determining whether underground facilities will be encountered, and if so where they are located from each and every public utility, municipal corporation or other person having the right to bury such underground facilities within the public street, alley, right-of-way or utility easement and taking measures for control of the facilities in a careful and prudent manner.
- B. Every public utility, municipal corporation or other person having the right to bury underground facilities shall file with the corporation commission the job title, address and telephone number of the person or persons from whom the necessary information may be obtained. Such person or persons shall be readily available during established business hours. The information on file shall also include the name, address and telephone number of each one-call notification center to which the owner of the facility belongs.

Upon receipt of inquiry or notice from the excavator, the owner of the facility shall respond as promptly as practical, but in no event later than two working days, by marking such facility with stakes, paint or in some customary manner. No person shall begin excavating before the location and marking are complete or the excavator is notified that marking is unnecessary.

- C. On a timely request by the owner of a facility, the excavator shall mark the boundaries of the location requested to be excavated in accordance with a color code designated by the commission or by applicable custom or standard in the industry. A request under this subsection for excavator marking does not alter any other requirement of this section.
- D. In performing the marking required by subsection B of this section, the owner of an underground facility installed after December 31, 1988 in a public street, alley or right-of-way dedicated to public use, but not including any express or implied private property utility easement, shall locate the facility by referring to installation records of the facility and utilizing one of the following methods:
 - 1. Vertical line or facility markers.
 - 2. Locator strip or locator wire.
 - 3. Signs or permanent markers.
 - 4. Electronic or magnetic location or tracing techniques.
 - 5. Electronic or magnetic sensors or markers.
 - 6. Metal sensors or sensing techniques.
 - 7. Sonar techniques.
 - 8. Underground electrical or radio transmitters.
 - 9. Manual location techniques, including pot-holing.
 - 10. Surface extensions of underground facilities.
 - 11. Any other surface or subsurface location technique at least as accurate as the other marking methods in this subsection not prohibited by the commission or by federal or state law.
- E. For an underground facility other than one installed after December 31, 1988, in a public street, alley or right-of-way dedicated to public use, in performing the marking required by subsection B of this section, the owner may refer to installation or other records relating to the facility to assist in locating the facility and shall locate the facility utilizing one of the methods listed under subsection D of this section.
- F. If an underground facility owner is unable to complete the location and marking within the time period provided by subsection B of this section, the facility owner shall satisfy the requirements of this section by providing prompt notice of these facts to the excavator and assigning one or more representatives to be present on the excavation site at all pertinent times as requested by the excavator to provide facility location services until the facilities have been located and marked. The underground facility owner shall bear all of its own costs associated with assigning representatives.

If representatives are assigned under this subsection, the excavator is not responsible or liable for damage to or repair of the owner's underground facility while acting under the direction of an assigned representative of the owner, unless the damage or need for repair was caused by the excavator's negligence.

- G. The marking required by subsection B of this section is valid for fifteen days from the date of the marking excluding Saturdays, Sundays and other legal holidays. If the excavation will continue past the validity period of the marks as provided by this subsection, the excavator shall notify the facility owner or an organization designated by the facility owner at least two days, excluding Saturdays, Sundays and legal holidays, before the end of the validity period.
- H. Nothing in this section shall be construed to prevent an excavator and an underground facility owner from holding a preconstruction conference regarding marking and location of underground facilities and entering into a mutually agreeable written schedule or written arrangement for satisfying the requirements of this section, except that this subsection does not eliminate the excavator's obligation to notify the facility owner to mark excavation sites under subsection B of this section based on the actual construction schedule.
- I. The owner of an underground facility shall notify the excavator whether the facility is active or abandoned. For an underground facility abandoned after December 31, 1988 or covered by installation records prepared under § 40-360.30, subsection A, the owner of the facility may not advise or represent to the excavator that a facility or portion of a facility is abandoned unless the owner has verified, by reference to installation records or by testing, that the facility or portion is actually abandoned and not merely inactive. For all other abandoned or apparently abandoned underground facilities, each one-call notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify that the facility is abandoned or active and a method for reimbursing the verifying facility owner for the cost incurred. The reimbursement method may not include any charge or expense to the excavator. An inactive facility shall be considered active for purposes of this article. For all purposes under this article, a facility owner, excavator or other person subject to this article may not represent that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned pursuant to this subsection.
- J. Nothing in this section shall be construed as prohibiting the use of warning tape, warning markers or any other warning device by the owner of an underground facility.

§ 40-360.23. Making excavation in careful, prudent manner; liability for negligence; notice; response; obliteration of marks; representative availability.

- A. Obtaining information as required by this article does not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such persons from liability for any damage or injury resulting from his negligence.

- B. After markings have been made pursuant to § 40-360.22, an excavator shall notify either the owner of an underground facility or an organization designated by the owner if the excavator encounters an underground facility that has not been located and marked or has been marked in the wrong location.
- C. Unless it would interfere with compliance with commission rules or requirements regarding maintenance or restoration of service and repair of facilities, the owner of an underground facility shall immediately respond to a notification under subsection B of this section for emergencies involving injury or damage.
- D. An excavator or a facility owner shall not move or obliterate markings made pursuant to § 40-360.22, subsection B or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with this article.
- E. Owners of underground facilities in a county having a population of more than seven hundred one thousand persons according to the most recent United States decennial census shall have designated representatives available and on call for excavators who by public works contract specifications or municipal ordinances are required to work in congested locations involving public streets, alleys or rights-of-way dedicated to the public use during the night or on weekends. Night and weekend telephone numbers to reach the designated representatives shall be furnished to the excavator in writing within forty-eight hours after they are requested for a specific location.

§ 40-360.24. Notice of damage to underground facility.

In the event of any damage to or dislocation of any underground facility in connection with any excavation the person responsible for the excavation operations shall immediately notify the owner of such facilities and shall not attempt any repair, except temporary emergency repairs, to the damaged facility. The excavation shall be left open until the arrival of representatives of the owner of the facility. Upon receipt of notice, the owner of the underground facility shall dispatch its representatives promptly, but in no event later than two working days, to examine the underground facility and, if necessary, effect repairs.

§ 40-360.25. Injunction; mandamus.

If any person is engaging in excavation in a negligent or unsafe manner which has resulted in or is likely to result in damage to an underground facility or if any person is proposing to use procedures for excavation which are likely to result in damage to an underground facility, the owner of such facility may commence an action in the superior court in the county in which the excavation is occurring or is to occur, or in which the person complained of has its principal place of business or resides, for the purpose of having such negligent or unsafe excavation stopped and prevented, either by mandamus or injunction. Such persons as the court may deem necessary or proper may be joined as parties.

The final judgment in any such action or proceeding shall either dismiss the action or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the complaint. If the court finds that the person complained of has repeatedly engaged in negligent or unsafe excavation resulting in damage to underground facilities after the effective date of this article, the court shall issue such order and take such equitable action as shall be reasonable and appropriate to prevent continuance by such person of such negligent or unsafe operations.

§ 40-360.26. Damage of underground facility; liability to owner; homeowner exemption.

- A.** If any underground facility is damaged by any person as a result of failing to obtain information as to its location, failing to take measures for protection of the facilities or failing to excavate in a careful and prudent manner as required by this article, the person is liable to the owner of the underground facility for the total cost of the repair of the facility.
- B.** A person engaging in excavating in an express or implied utility easement across property owned by him is not liable to the owner of the underground facility damaged by the property owner if the damaged underground facility is not buried or placed below ground in accordance with the applicable standards, if the underground facility is not located within the easement or if the person engaged in the excavation has complied with § 40-360.22.

§ 40-360.27. Liability for attorney's fee.

The prevailing party in an action brought to impose liability under any section of this article shall be entitled to recover a reasonable attorney's fee.

§ 40-360.28. Civil penalty; liability.

- A.** A person who violates any provision of this article is subject to a civil penalty in an amount not to exceed five thousand dollars to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the general fund.
- B.** If a violation of this article results in physical contact with an underground facility, the violator is liable to the owner of the facility for all damages to the facilities and costs, expenses and damages to third parties incurred by the owner of the facility as a result of the contact.
- C.** If the owner or operator fails to locate or incorrectly locates the underground facility, pursuant to this article, the owner or operator becomes liable for resulting damages, costs and expenses to the injured party.

D. This section is not applicable to an excavation made:

1. During an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.
2. In agricultural operations or for the purpose of finding or extracting natural resources.
3. With hand tools on property owned or occupied by the person performing the excavation while gardening or tilling such property.

§ 40-360.29. Charters and ordinances of governments not affected; preemption.

- A.** Except as provided in subsection B, the provisions of this article shall be cumulative and supplemental to other provisions of law or charter and shall not be construed to prohibit cities and towns from enacting ordinances regulating excavations.
- B.** The legislature finds that notification, location, marking, installation records, enforcement and remedies relating to underground facilities pursuant to §§ 40-360.22, 40-360.24, 40-360.25, 40-360.26, 40-360.28 and 40-360.30, are a matter of statewide concern and are hereby preempted by this state.

§ 40-360.30. Installation records of underground facilities.

- A.** For all new underground facilities, excluding service drops and service lines, installed after December 31, 1988, in a public street, alley or right-of-way dedicated to the public use, but not including any express or implied private property utility easement, the owner of an underground facility shall prepare, or cause to be prepared, installation records of the underground facility, shall keep such records in its possession and shall refer to such records in locating and marking pursuant to § 40-360.22. Installation records shall also reflect, if applicable, any field notes or other indications by the installer of the facilities that the installation involved deviations or changes from installation standards, instructions or designs and the correction of any inaccuracies found as a result of locating or marking the underground facilities. Installation records of an underground facility shall indicate if all or a portion of the facility has been abandoned.
- B.** Installation records are for the internal use of the facility owner in locating its underground facilities and are not intended to be relied on by others.
- C.** After January 1, 1989, information contained in installation records relating to the nature and location of underground facilities, but not the installation records themselves, shall be made available in a timely manner and on a need to know basis to authorized persons who submit a written request and who are engaged in design of construction projects

involving excavation in a public street, alley or right-of-way dedicated to the public use, excluding any express or implied private property utility easement. The owner of an underground facility shall make the same information available to authorized persons who are complying with a requirement imposed by contract providing for construction projects involving excavation in a public street, alley, or right-of-way dedicated to the public use, but excluding any express or implied private property utility easement or by operation of law to verify or confirm the nature and location of underground facilities. The owner of the underground facility, on consultation with the authorized person, shall determine the appropriate manner and form for providing the information. The owner of the underground facility may indicate any portions of the information that are proprietary and require the authorized person to protect proprietary matters.

- D.** The owner of an underground facility, in its sole discretion, may satisfy the requirements of subsection C of this section by allowing an authorized person to inspect or copy installation records themselves.

§ 40-360.31. Routine road maintenance; prior notification.

- A.** Prior to performing routine road maintenance grading as defined in § 40-360.21, the state or political subdivision performing the routine road maintenance grading shall notify every public utility, municipal corporation or other person having the right to bury underground facilities in advance. For the purpose of this section advance notification means written notice delivered not more than sixty calendar days nor less than two working days prior to the performance of routine maintenance grading. The notification shall include all roads and their location which are planned for routine road maintenance grading within the period identified. Notification is complete when received by the persons identified in the records of the commission pursuant to § 40-360.22. No marking pursuant to § 40-360.22 is required in response to a notification of routine road maintenance and the notification specified in this section constitutes full compliance with any notice requirements for routine road maintenance grading.
- B.** If written notice, as required by subsection A of this section, is not practicable, the state or a political subdivision shall comply with the notice provisions required for excavation under § 40-360.22 before performing routine road maintenance grading.
- C.** Routine road maintenance grading as defined in § 40-360.2 1, does not include:
1. Recovery of material from the bottom of the borrow ditch at a depth beyond the depth established when the borrow ditch was originally constructed or subsequently reconstructed to accommodate a newly installed underground facility.
 2. Grading which progressively reduces the elevation of the roadway surface.
 3. Grading of the sub-base of the roadway.

4. Any other activity that intrudes on the sub-base of the roadway.
- D.** If the state or a political subdivision performs any of the activities listed in subsection C of this section, the state or political subdivision shall be required to comply with the notice provisions required for excavation under § 40-360.22.

§ 40-360.32 One-call notification center membership.

- A.** Every public utility, municipal corporation, underground facility owner or person having the right to bury underground facilities shall be a member of a one-call notification center, either statewide or serving each county in which such entity or person has underground facilities. Each one-call notification center shall establish a limited basis participation membership option, which may be made available to all members, but which must be made available for any member serving less than one thousand customers or any member irrigation or electrical district. A facility owner who elects limited basis participation membership will provide to the one-call notification center the location of its underground facilities solely by identifying the incorporated cities and towns, or for unincorporated county areas, by identifying the townships, in which it has facilities. The service level provided to limited basis participation members by the one-call notification center is limited to providing excavators with names and telephone numbers the excavator should contact to obtain facilities location. Each one-call notification center shall establish fair and reasonable fees for limited basis participation members, based on customer count, areas occupied or miles of underground facilities.
- B.** This section does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities is located in a public street, alley or right-of-way dedicated to public use.

ARIZONA ADMINISTRATIVE CODE
CHAPTER 2
CORPORATION COMMISSION
FIXED UTILITIES
ARTICLE 1. GENERAL PROVISIONS

R14-2-106. Commission color code to identify location of underground facilities.

- A.** If the location of an underground facility is marked with stakes, paint or in some customary manner pursuant to A.R.S. § 9-360.21.1 3, the facility owner will use the following color code:

<u>Facility Type</u>	<u>Specific Color</u>
Electric Power Distribution and Transmission	Safety Red
Gas Distribution and Transmission Oil Product Distribution and Transmission; Dangerous Materials, Product Lines	High Visibility Safety Yellow
Telephone and Telegraph System; Cable Television	Safety Alert Orange
Fiber Optics Communication Lines	The Letter "F" in Safety Alert Orange
Water Systems; Slurry Pipelines	Safety Precaution Blue
Sanitary Sewer Systems	Safety Green

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UNACCEPTABLE FACILITY LOCATION COLORS:

Florescent Pink - This shall be considered a land surveyor marking.

White - This shall be reserved for excavator markings.

- B. Excavators and Underground Facility Owners shall consider use of the color fluorescent pink to be indicative of land survey markings and not location markings for any underground facility. Surveyors may place aerial photogrammetric markings (targets) using the color white, such markings shall have a fluorescent pink dot not less than two inches in diameter placed within one foot of any edge of the aerial marking. Fluorescent pink shall not be used by excavators or underground facility owners.
- C. Excavators making markings pursuant to Arizona Revised Statute § 40-360.22.C are required to use the color white.
- D. Colors similar to those listed in R14-2-106.A through R14-106.C shall not be used for other than their listed purpose.